

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE PROPOSAL TO CREDITORS OF CONFORTI HOLDINGS LIMITED,
A CORPORATION INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*,
R.S.O. 1990, C. B.16**

NOTICE OF MOTION

Moroccanoil, Inc. ("**Moroccanoil**") will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on a date to be established by the Commercial List Office, or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard orally:

- In writing under subrule 37.12.1 (1) because it is (*insert one of on consent, unopposed or made without notice*);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

via Zoom at Toronto, Ontario.

THE MOTION IS FOR:

1. An order, among other things:
 - (a) Declaring that no secured indebtedness (the "**Alleged BEI Secured Debt**") is owing by Conforti Holdings Limited ("**CHL**") to Beauty Experts Inc. ("**BEI**");

- (b) Prohibiting CHL from accepting a credit bid from Cicaplus Ltd. ("**Cicaplus**") or any nominee of Cicaplus of the Alleged BEI Secured Debt under an asset purchase agreement dated as of May 5, 2021 (the "**Original APA**"), as amended by a bid form and amendment dated as of July 15, 2021 (the "**Amendment**" together with the Original APA, the "**Amended APA**"); and
 - (c) In the alternative to (b) above, making the approval of the transaction contemplated by the Amended APA subject to the condition that Cicaplus pay the amount of the purchase price represented by the Alleged BEI Secured in cash instead of by way of credit bid.
2. Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE

Background to the Relationship Between Moroccanoil and CHL

1. Moroccanoil produces and distributes a popular line of hair care products in over sixty countries, including the United States and Canada.
2. In or around 2009, Moroccanoil began receiving reports of counterfeit Moroccanoil Oil Treatment products appearing at various retail locations throughout the United States and Canada;
3. After tracing counterfeit Moroccanoil products to salons owned by Salon Distribution, Inc. (hereafter included in the definition of CHL) and Tony Conforti ("**Conforti**"), Moroccanoil sued CHL and Conforti in New Jersey in 2011 (the "**2011 Litigation**");
4. Salon Distribution, Inc. is a predecessor by amalgamation to CHL;
5. CHL, BEI, and Cicaplus are all entities controlled either directly or indirectly by Conforti;

6. On July 15, 2013, Salon Distribution, Inc. and Conforti entered into a settlement agreement with Moroccanoil to resolve the 2011 Litigation (the "**Agreement**");

7. Conforti falsely signed the agreement as Salon Distribution, Inc., an entity that did not exist at the time (as it had by then amalgamated into CHL), and then warranted that Salon Distribution, Inc. had the right and power to sign the Agreement. Conforti would conceal the amalgamation of CHL from Moroccanoil for over six years;

8. Moroccanoil subsequently learned that Salon Distribution, Inc. (now CHL) and Conforti had breached the Agreement and sold or otherwise transferred a significant quantity of Moroccanoil products to an unauthorized retail store in Macau;

9. In April 2015, Moroccanoil filed its first Motion to Enforce with the United States District Court District of New Jersey (the "**NJ Court**") on the basis, among other things, that CHL and Conforti breached the Agreement by reselling or otherwise transferring large quantities of Moroccanoil products, either directly or indirectly, to an unauthorized retail store (the "**New Jersey Proceedings**");

10. Conforti and CHL opposed and filed an affirmative Cross-Motion to Enforce Settlement Agreement in August 2015 (the "**CHL Motion**");

11. The NJ Court preliminarily denied the motions as premature, and assigned Magistrate Judge Hammer to oversee discovery;

12. The parties engaged in written and oral discovery as directed by the NJ Court;

13. As of the date hereof the New Jersey Proceedings are stayed, pending the filing of Moroccanoil's claims against CHL with this Honourable Court so that they may be dealt with in these bankruptcy

proceedings. That being said the parties have made substantial headway in the proceedings including with respect to discovery;

14. The result of discovery to date are clear, Moroccanoil is entitled to the following amounts in the New Jersey Proceedings: (A) "Purchase Requirement Damages" of \$374,279 for unfulfilled purchases; (B) liquidated damages of \$860,000 for diversion; (C) reimbursement of legal fees in the amount \$1,237,465.00; and, (D) applicable interest in the amount of \$336,013.12;

CHL Files NOI Proceedings

15. Moroccanoil is one of the largest unsecured creditors of CHL, if not the largest;

16. CHL filed a Notice of Intention to Make a Proposal (the "**NOI**") under Division 1 of *the Bankruptcy and Insolvency Act* (Canada) on September 28, 2020;

17. Pursuant to Section 50.4(1) of the BIA, as part of the filing of its NOI, CHL was required to prepare a list of the names of its creditors with claims amounting to two hundred and fifty dollars or more (the "**Initial Creditor List**");

18. Pursuant to Section 50.4(6), within five days of the filing of the NOI, the proposal trustee (the "**Proposal Trustee**") was required to send to every known creditor notice of the filing of the NOI along with a copy of the Initial Creditor List;

19. Despite the legislative requirements noted above, CHL failed to include Moroccanoil on the Initial Creditor List submitted in filing the NOI and Moroccanoil did not receive notice of the filing of the NOI;

20. Despite the fact that the New Jersey Proceedings were ongoing, with multiple steps taken during this period including the hearing of certain motions, the NOI proceedings were not disclosed to Moroccanoil or the New Jersey Court;

21. On June 7, 2021, as it was preparing for a deposition of CHL, Moroccanoil first learned of the NOI proceedings, more than eight months after the NOI was filed;

The Sales Process Hearing

22. CHL's failure to provide notice to Moroccanoil of the NOI proceedings despite the legislative requirement to do so has had significant consequences;

23. Among other things, Moroccanoil was not provided notice of, or given the opportunity to participate and make submissions with respect to the appropriateness of the sale process (the "**Sale Process**") that was approved by Order of the Honourable Justice Conway (the "**Sale Process Order**") on May 14, 2021 for CHL's head office located at 7755 Warden Avenue, Markham, Ontario (the "**Warden Property**");

24. The Warden Property is CHL's most significant asset;

The Sale Process

25. The Sale Process Order included approval of a stalking horse bid submitted by Cicaplus pursuant to the Original APA that was based on a "credit bid" of, among other things, the Alleged BEI Secured Debt;

26. After the Sale Process Order was granted, the Proposal Trustee commenced the Sale Process;

27. Moroccanoil understands that as part of the Sale Process, the Proposal Trustee received a number of qualifying bids in addition to the Original APA submitted by Cicaplus;

28. An auction amongst qualified bidders was held on July 15, 2021;
29. At the conclusion of the auction, Cicaplus was the successful bidder, having submitted the highest bid as documented by the Amended APA;
30. As with the Original APA, the Amended APA includes a credit bid of the Alleged BEI Secured Debt;

The Alleged BEI Secured Debt

31. Based on the fifth report of the Proposal Trustee dated August 13, 2021, Moroccanoil understands that the Alleged BEI Secured Debt is valued at \$1,500,000;
32. As part of the New Jersey Proceedings, Moroccanoil received detailed financial disclosure (the “**Financial Information**”) regarding CHL’s business, including profit and loss statements, balance sheets, general ledgers and trial balances;
33. The Financial Information did not disclose the existence of the Alleged BEI Secured Debt;
34. In Support of the Alleged BEI Secured Debt, the Proposal Trustee has provided Moroccanoil with a “schedule of compensation” that was presumably prepared by Conforti (the “**Schedule of Compensation**”);
35. The Schedule of Compensation is one page, undated and provides no evidentiary support for the Alleged BEI Secured Debt;
36. The Alleged BEI Secured Debt does not appear to be *bona fide* and there is no evidence in the record that it represents the value received by CHL;

General

37. Those other grounds set out in the Berube-Cote Affidavit and the Riedel Affidavit and the exhibits thereto;
38. The provisions of the BIA, including Section 4.2, 95 and 96 thereof;
39. The provisions of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29, including Section 2;
40. The provisions of the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33, including Section 4;
41. The inherent and equitable jurisdiction of this Honourable Court;
42. Such further and other grounds as counsel for Moroccanoil may advise and this Honourable Court may permit.

DOCUMENTARY EVIDENCE

43. The following documentary evidence will be used at the hearing of the motion:
 - (a) The affidavit of Marie-Eve Berube-Cote to be filed (the "**Berube-Cote Affidavit**");
 - (b) The affidavit of Mark Riedel to be filed (the "**Riedel Affidavit**");
 - (c) Such further and other materials as counsel for the Moroccanoil may advise and as this Honourable Court may permit.

Date: August 20, 2021

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PROCEEDING COMMENCED AT TORONTO

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